

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
DALE R. MONTY,
d.b.a. ARLINGTON SHAKE COMPANY,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 692

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$250 civil penalty for an alleged open burning violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 8th day of April, 1975, at Everett, Washington; and appellant, Dale R. Monty, d.b.a. Arlington Shake Company, appearing pro se and respondent, Puget Sound Air Pollution Control Agency, appearing through its attorney, Keith D. McGoffin; and Board members present at the hearing being Chris Smith, presiding officer, and Walt Woodward and the Board having considered the sworn testimony, exhibits, records and files herein and

1 having entered on the 24th day of April, 1975, its proposed Findings of
2 Fact, Conclusions of Law and Order, and the Board having served said proposed
3 Findings, Conclusions and Order upon all parties herein by certified
4 mail, return receipt requested and twenty days having elapsed from said
5 service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the premises;
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 24th day of
11 April, 1975, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 22nd day of March, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

16 Chris Smith
17 CHRIS SMITH, Chairman

18 Walt Woodward
19 WALT WOODWARD, Member


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26 FINAL FINDINGS OF FACT,
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AND ORDER

CERTIFICATION OF MAILING

I, LaPene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 23rd day of May, 1975, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Dale R. Monty
P. O. Box 42
Arlington, Washington 98223

Mr. Keith D. McGoffin
Burkey, Marsico, Roval, McGoffin,
Turner and Mason
P. O. Box 5217
Tacoma, Washington 98405



LARENE BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 Hearings Board makes these

2 FINDINGS OF FACT

3 I.

4 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3rd
5 Ex. Sess., has filed with this Board a certified copy of its Regulation
6 I containing respondent's regulations and amendments thereto.

7 II.

8 Section 9.02(d)(3)(i) of respondent's Regulation I makes it unlawful
9 to cause or allow an outdoor wood waste fire without obtaining a permit
10 from respondent for such fire. Section 9.02(g) states that it shall be
11 prima facie evidence that the person who controls property on which an
12 outdoor fire occurs has caused or allowed said fire. Section 3.29
13 authorizes a civil penalty of not more than \$250 for any violation of
14 Regulation I.

15 III.

16 On November 28, 1973, while appellant was operating his Arlington
17 Shake Company on rented property near Arlington, Snohomish County,
18 appellant was notified by an inspector on respondent's staff that
19 appellant's wood waste open burning permit issued by respondent had
20 expired and that it would be necessary for appellant to obtain another
21 such permit prior to burning wood waste.

22 IV.

23 On July 24, 1974, on the same property described in Finding of Fact
24 III, several piles of wood waste and sawdust smoldered and burned over an
25 area of about one-half acre. Nobody was present near the fires or in
6 a dwelling on the property which had been occupied by appellant. An

27 FINDINGS OF FACT,
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1 automobile, leased by appellant, was parked on the property. At
2 least two cows, owned by appellant, grazed on the property.

3 V.

4 The smoldering fires were observed by an inspector on respondent's
5 staff. He ascertained that appellant had no wood waste burning permit
6 from respondent. From an address obtained from the firm which leased
7 the automobile to appellant, respondent mailed to appellant Notice of
8 Violation No. 9351, citing Section 9.02 of respondent's Regulation I,
9 and Notice of Civil Penalty No. 1684, in the sum of \$250, and Notice
10 of Civil Penalty No. 1684 (amended), also in the sum of \$250, which
11 is the subject of this appeal.

12 VI.

13 Appellant began renting the property described in Finding of Fact
14 III in January, 1971, and thereupon conducted his shake business, in
15 the course of which he dumped on the ground the piles of wood waste and
16 sawdust which were burning on July 24, 1974. On May 1, 1974,
17 appellant sold his shake manufacturing equipment and ceased operations
18 as Arlington Shake Company. He and his family continued to reside in
19 the dwelling on the property. On June 15, 1974, appellant made his
20 final monthly advance rental payment. He and his family left the
21 dwelling for residence in Eastern Washington on or about July 20, 1974,
22 but he left family possessions in the dwelling, parked his leased
23 automobile on the property and grazed his cows on the property. On
24 July 27, 1974, appellant returned from Eastern Washington to the
25 Arlington property to move the family possessions to Eastern Washington.
26 On this visit, he noticed the charred piles of wood waste and sawdust

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1 but does not know how the fires were ignited.

2 VII.

3 Any Conclusion of Law hereinafter recited which is deemed to be a
4 Finding of Fact is adopted herewith as same.

5 From these Findings, the Pollution Control Hearings Board comes
6 to these

7 CONCLUSIONS OF LAW

8 I.

9 There is no proof that appellant ignited the fires in question.
10 They burned, however, in piles of wood waste which he had accumulated
11 in his shake mill operation. Further, appellant had no permit from
12 respondent to burn wood waste.

3 II.

14 The question before this Board is whether appellant still was in
15 "control" of the property as cited in Section 9.02(g) of respondent's
16 Regulation I. He had paid his final month's rent on June 15, 1974,
17 but he still resided in the dwelling on the property for five days after
18 the expiration of that rental period and retained his family possessions,
19 his leased car and his cows on the property for at least 12 days after
20 said expiration, including the date cited in Notice of Violation No. 9351.
21 This Board, therefore, must find that appellant was in control of the
22 property in question on July 24, 1974.

23 III.

24 It follows, therefore, that appellant was in violation of
25 Section 9.02, as cited in Notice of Violation No. 9351.

26 FINDINGS OF FACT,
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IV.

Having determined that there is no proof that appellant ignited the fires, this Board finds the maximum allowable amount in Notice of Civil Penalty No. 1684 (amended) to be unreasonable and excessive.

V.

Any Finding of Fact recited herein which is deemed to be a Conclusion of Law is adopted herewith as same.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The appeal is denied but the \$250 penalty is stricken and appellant is directed to pay respondent the sum of \$50.

DONE at Lacey, Washington this 24th day of April, 1975.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith
CHRIS SMITH, Chairman

Walt Woodward
WALT WOODWARD, Member